TRIAL- Ex3

Court File No: 619-90

# ONTARIO COURT OF JUSTICE (GENERAL DIVISION)

BETWEEN:

# GLAD DAY BOOKSHOP INC. and JEARLD MOLDENHAUER

**Appellants** 

- and -

# DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE

Respondent

## RESPONDENT'S PRODUCTIONS

### **VOLUME III**

Department of Justice Toronto Regional Office The Exchange Tower 2 First Canadian Place Suite 3400, Box 36 Toronto, Ontario M5X 1K6

Per: Debra M. McAllister Tel: (416) 973-3158

Solicitor for the Respondent

Court File No: 619-90

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## **RESPONDENT'S PRODUCTIONS**

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4.	Hot Tricks (Vol. 5)
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6.	Bear (Issue No. 9)
7.	Playguy (December, 1989)
8.	In Touch (No. 154)
9.	Advocate Men (November, 1989)

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CO 2399	CO 1949	CO 1807	CO 1806	CO 1763	CONTROL NO.
-Playguy (December, 1989) -In Touch (No. 154) -Advocate Men (Nov./89)	-Bear (Issue No. 9)	-Hot Tricks (Vol. 5) -Sex Stop (Vol. 3)	-Movie Star Confidential /Harry Chess -Humongous (Vol. 5) -Hot Tricks (Vol. 5)	Oriental Guys (Issue No.4 Spring 1989)	TITLE
November 14, 1989	October 16, 1989	October 4, 1989	October 4, 1989	October 3, 1989	DETAINED
November 20, 1989	November 1, 1989	October 16, 1989	October 16, 1989	October 16, 1989	DETERMINA- TION [s.58]
-dated January 2, 1990 -rec'd January 3, 1990	-dated January 2, 1990 -rec'd January 3, 1990	-dated January 2, 1990 -rec'd January 3, 1990	-dated January 2, 1990 -rec'd January 3, 1990	-dated January 2, 1990 -rec'd January 3, 1990	REQUEST FOR REDETERMINA-TION [s.61(1)(a)]
January 9, 1990	January 9, 1990	January 9, 1990	January 9, 1990	January 9, 1990	REDETER- MINATION OF TVA [s.60(3)]
-dated April 4, 1990 -rec'd April 20, 1990	-dated April 4, 1990 -rec'd April 20, 1990	-dated April 4, 1990 -rec'd April 20, 1990	-dated April 4, 1990 -rec'd April 20 1990	-dated April 4, 1990 -rec'd April 20, 1990	REQUEST FOR REDETERMINA-TION [s.63(1)(a)]
July 16, 1990	July 16, 1990	July 16, 1990	July 16, 1990	July 16, 1990	REDETER- MINATION OF DM [s.63(3)]

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Revenue Canada Customs and Excise

Continuation Sheet / Feuille supplémentaire

IMENT OF NATIONAL REVENUE. CONCORD OVER A

# NOTICE OF DETENTION/DETERMINATION

Canad'a

Importateur	AVIS DE RETENUE OU	DE CLASSEMENT TARIFAIRE	
Robert BAnks		Regional Control No. N° de contrôle régional	999
Glad Day Rooksho	p Inc.		130-2/64T 2173
598A Yonge St. Foronto Ontario		Point of Entry Bureau d'entrée	Int'l Mail
MAY 123		Point of Entry Control No N° de contrôle du bureau d'ent	
	· · · · · · · -	Date	0.0 2703
PART A - NOTICE OF DETENTION			Oct 3, 1989
		PARTIE A — AVIS DE RETEI	NUE
The following goods have been detained for a de a determination has been made, you will be not	med in writing	Les marchandises désignées or apri Nous vous aviserons par écrit du c	ès ont été retenues aux fins du classement tantaire
Description of goods / Désignation des marchand  25 Magazines - OG		SENT FROM	assement effectue.
xporter / Exportateur	_		
Int I wavelenghht	:Inc 2215 R Market St	. \$236 San Fran Ca 941	14
and the second of the second o	***		
ART B - NOTICE OF DETERMINATION	N	PARTIE B — AVIS DE CLASS	FUENT
he following goods have been examined and their nder the provisions of s. 114 of the Customs Te	r importation into Canada is prohibited		
nder the provisions of s. 114 of the Customs Ta	riff and code 9956 of Schedule VII	au Canada est prohibée en vertu de de l'annexe VII.	signées ci-après, il a été établi que leur importation l'article 114 du Tarif des douanes et du code 9956
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	*# ** 		
Dis represents a determination	*		
nis represents a determination pursuant to section specting this determination are set out on the re	n 58 of the Customs Act. Your rights everse of this form.	Cette décision constitue un classement Vos droits concernant de classement	aux termes de l'article 58 de la Loi sur les douanes
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M Muserene	Canin.	1 / 202	Cecl. 11/09
Custome Officer / Acent des douanes	Tali	e / Titro	Date of Determination / Date du classement
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		***	
ne following goods have been examined and their in	mportation into Canada is admissible.	Après examen, il a été établi que les n au Canada.	narchandises désignées ci-après sont admissibles
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TO Walle This respective of the c	settle et a de la		
ease contact Canada Customs at the point of entry ant of duties on the admissible goods.	y to make arrangements for the pay-	Veuillez communiquer avec les douane	s canadiennes au bureau d'entrée afin de prendre
		des arrangements pour le paiement d	es droits.
Control of the state of the sta	- 1 · 1 · 1		
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Livre	Record Disque Audiotape	Advertisement	Brochure Dépliant
Magazine Magazine	Audiotape Bande auditive	Photographie Photographie	Other
Comic Bande dessinée	Playing Cards Jeu de cartes	Booklet	L Autre
Mode of Transport / Mode de transport	occides	L_J L vret	41
Mail		Were goods declared? Les marchand ses ont-elles été déclarées?	Yes No Non Non
if not declared, mode of concealment / Si non déclaré	ées, mode de dissimulation		X
Classification (Memorandum D9-1-1)			
a) Sex With Violence Violence sexuelle	c) Incest	e) Necrophilia	Anal Penetration
b) Child Sex Pornographie entantine		Necrophile	Pénétration anale
Title / Titre	d) Bestialité  Bestialité	n hate Propaganda Procagande haineuse	Autre UEGRAOSTIUN
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Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyé à I # C	In	
	Dale envoye a FA C	D sposition	

Yes / Our

No / Non

NOTICE OF DETENTION/DETERMINATION AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

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995€ Regional Control No.
N° de contrôle régional 3730-2/647 Glad Day Bookshop 598A Yonge St Point of Entry Bureau d'entrée Toronto Ontario Int'l Mail M4T 123 Point of Entry Control No.

Nº de contrôle du bureau d'entrée CO 1806 Date Oct 4, 1989 ART A - NOTICE OF DETENTION PARTIE A - AVIS DE RETENUE ne following goods have been detained for a determination of tariff classification. Once determination has been made, you will be notified in writing. Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire Nous vous aviserons par écrit du classement effectué. escription of goods / Désignation des marchandises 5 Books- Movie Saar Confidential ONLY 1 OF EACH SENT FROM ARSENALS 16 Books- Humongous Vol. 5 15 Baaks- Harry Chess 24 Books- Hot Tricks Vol. 5-<porter / Exportateu</pre> Bookpeople 2929 Fifth St Berkeley CA 94710 ART B — NOTICE OF DETERMINATION PARTIE B - AVIS DE CLASSEMENT TARIFAIRE ie following goods have been examined and their importation into Canada is prohibited ider the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII. Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 is represents a determination pursuant to section 58 of the Customs Act. Your rights Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule. specting this determination are set out on the reverse of this form mim: Jan 19:00 14: Div " Li . . . . Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada. e following goods have been examined and their importation into Canada is admissible. 100 the service to the service of the service of Larbin of the large and the Holi rodge om i , ase contact Canada Customs at the point of entry to make arrangements for the pay-Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits. Type / Genre ત આદા Film Length / Longueur Format Time / Durée orine d Committee of the commit alsonin . n. 9956 Book Livre Advertisement, 11 : Magazine Audiotape Bande auditive Magazine Mode of Transport / Mode de transport Were goods declared? Les marchandises ont-elles été déclarées? Ma11 li not declared, mode of concealment / Si non déclarées, mode de dissimulation Classification (Memorandum D9-1-1) e) Necrophilia Nécrophilia a) Sex With Violence Violence sexuelle V c) Incest BUNDAGE b) Child Sex Pornographie enfantine f) Hate Propaganda Propagande haineuse K) Other DE GRADATIC~ Title / Titre Date of Appeal / Date d'appel Date sent to H.Q. / Date envoyé à l'A C. Continuation Sheet / Feuille supplémentaire No / Non

Revenu Canada Douanes et Accise

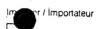
# Canad'ä

NOTICE OF DETENTION/DETERMINATION Importateur AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE 995€ Regional Control No. N° de contrôle régional Glad Day Bookshop 598A Youge St Point of Entry Toronto Ontario Bureau d'entrée Int!1 Mail' M4Y 123 Point of Entry Control No N° de contrôle du bureau d'entrée **CO** 1807 Date Oct 4, 1989 ART A - NOTICE OF DETENTION PARTIE A - AVIS DE RETENUE he following goods have been detained for a determination of tariff classification. Once determination has been made, you will be notified in writing. Les marchandises désignées di après ont été retenues aux fins du classement tarfaire. Nous vous aviserons par écrit du classement effectué. escription of goods / Désignation des marchandises 1 OF EACK SENT FROM ARSENALS 5 Books- Sex Stop Vol #3 22 Books- Hot Tricks Vol#5 xporter / Exportateur Bookpeople 29292Fifth St Berkeley CA 94710 ART B - NOTICE OF DETERMINATION PARTIE B - AVIS DE CLASSEMENT TARIFAIRE ne following goods have been examined and their importation into Canada is prohibited inder the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII. Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 s represents a determination pursuant to section 58 of the Customs Act. Your rights Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule. specting this determination are set out on the reverse of this form. 1...() Après examen, il a été établi que les marchandises désignées di après sont admissibles e following goods have been examined and their importation into Canada is admissible. au Canada.

ease contact Canada Customs at the point of entry to make arrangements for the payent of duties on the admissible goods.

Veuillez communiquer avec les douanes carladiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

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Mode of Transport / Mode de transport  Ma11  If not declared, mode of conceaiment / Si non déclarées, mode de dis	Were goods declared? Les marchand ses ont-elli	les été déclarées? Yes No Non
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Title / Titre		Quantity/ Quantité
Date of Appeal / Date d'appei:  Date sent to H.	Q. / Date envoyé à l'A C.	Disposition
Continuation Sheet / Feuille supplémentaire	Yes / Oui	No / Non S



## NOTICE OF DETENTION/DETERMINATION AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRE

Glad Day Bookstore 598A Yonge St. Toronto Ontario M4Y11Z3

995 Regional Control No. Nº de contrôle régional 730-2/69 Point of Entry Int'1 MAil Point of Entry Control No N° de contrôle du bureau d'entrée CO 1949 Date Oct 16p 1989

### PART A - NOTICE OF DETENTION

he following goods have been detained for a determination of tariff classification. Once determination has been made, you will be notified in writing.

escription of goods / Désignation des marchandises

PARTIE A - AVIS DE RETENUE

Les marchandises désignées di après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué

50 Magazines- " Bear " (1 Ropy sent from assent)

xporter / Exportateur

COA 2215R Market St No. 148 San Fran Ca. 94114

# ART B - NOTICE OF DETERMINATION

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RTMENT OF NATIONAL REVENUE C. STOMS AND EX. E

he following goods have been examined and their importation into Canada is prohibited nder the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

# PARTIE B - AVIS DE CLASSEMENT TARIFAIRE

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

Bear " prohibited Sund strain y John S

his represents a determination pursuant to section 58 of the Customs Act. Your rights specting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

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ne following goods have been examined and their importation into Canada is admissible.

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ease contact Cañada Customs at the point of entry to make arrangements for the payent of duties on the admissible goods

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Type / Genre Length / Longueur Jacqui Film Format Time / Durée remark to the semm 19.41 Book (gs. ), and the little garger, and . 638 13 11 Record Disque Magazine Photograph Photograph e Audiotape Bande auditive Magazine Magazine Comic Bande dessinée Mode of Transport / Mode de transport Were goods declared? Les marchand ses ont-elles été déclarées? Ma11
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Impr : or / Importateur

PART A - NOTICE OF DETENTION

xporter / Exportateur

Jescription of goods / Désignation des marchandises

ART B - NOTICE OF DETERMINATION

he following goods have been detained for a determination of tariff classification. Once determination has been made, you will be notified in writing.

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## NOTICE OF DETENTION/D AVIS DE RETENUE OU DE CLA

NOTICE OF DETENT AVIS DE RETENUE OU DI Glad Day Bookshop 598A Yonge St.	TION/DETERMINATION Canad
Glad Day Bookshop	
Glad Day Bookshop	E CLASSEMENT TARIFAIRE
	Regional Control No. N° de contrôle régional 3730-2/647-2777
Toronto, Ont. M4Y 1Z3	Point of Entry Bureau d'entrée Intl Mail
	Point of Entry Control No N° de contrôle du bureau d'entrée CO 2399
	Nov 14, 1989
NOTICE OF DETENTION	PARTIE A — AVIS DE RETENUE
goods have been detained for a determination of tariff classification. Once in has been made, you will be notified in writing.  goods / Désignation des marchandises	Les marchandises désignées or après ont été retenues aux fins du classement tarifair. Nous vous aviserons par écrit du classement effectué.
15 Magazines - 5 Playguy 5 In Teach 5 Advocate Men	
ortateur	
Glad Day Bookshop 673 Boylston st. Bost	PARTIE B — AVIS DE CLASSEMENT TARIFAIRE
goods have been examined and their importation into Canada is prohibited insigns of s. 114 of the Customs Tariff and code 9956 of Schedule VII.	Après examen des marchandises désignées ci-après, il a été établi que leur importat o
magazine prohib	au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 995 de l'annexe VII.
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a determination pursuant to section 58 of the Customs Act. Your rights determination are set out on the reverse of this form.	de Lannexe VII.  Cette décision constitue un classement aux termes de l'adicte 58 de la lei sur les douanes.
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Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Type / Genre , Length / Longueur	Videotape Ruban magnétoscopique	Format , -	Time / Durée
956 Book Livre  Magazine Magazine Magazine  Comic Bande dessinée  Record Disque Audiotape Bande auditive Playing Cards Jeu de cartes	Advertisement Publicité Photograph Photographe Booktet Livret	Broch Déple Other Autre	ant
ode of Transport / Mode de transport 311	White goods declared? Les marchandises ont-elles été	declarees? Tes	No Non
not declared, mode of concealment / Si non déclarées, mode de dissimulation  In Paccal assucation (Memorandum D9-1-1) as Sex With Violence violence sexuelle b) Child Sex Pornographie enfantine c) Bestrality Bestralité	e) Necrophilia Necrophilie  h Hale Propaganda Propagande haine		al Penetration Petration anale per P
le / litre    Date sent to H Q / Date envoyé à l A   Date		position	Quantity / Quantité

# ILER, CAMPBELL & ASSOCIATES

Barristers & Solicitors

150 Simcoe Street Toronto, Ontario Canada M5H 3G4 (416) 598-0103 FAX: 598-3484 Charles Campbell Brian Iler Murray Klippenstein Carol Lee Smith

Associates: Ian Anderson Garth Dee Paul H. Reinhardt Bruce D. Woodrow

November 24, 1989

Margaret Gillis
Prohibited Importations Unit
Canada Customs
6th Floor, Connaught Building
MacKenzie Avenue
Ottawa, Ontario K1A 0L5

Dear Ms. Gillis:

Re: Glad Day Bookshop (Toronto) Seizures

Enclosed please find a copy of the letter which was sent to the T.P.A. Unit, E. Holdings and Appeals for the Department of National Revenue, Customs and Excise. Also enclosed are copies of the K14D Request for Re-Determination forms which have been forwarded to the T.P.A. Unit in Toronto.

We take the view that the delay in exercising your power under the <u>Customs Act</u> is a breach of my clients' rights of free expression under the Charter. Any delays prevent our client from bringing the matter to court for a proper judicial determination of the issue of alleged obscenity.

The magazines seized in #3730-2/64T-2772 are of a genre which, in my clients' experience, are sometimes seized and ordered detained -- and sometimes not. We would like to treat the pending litigation as a test case in order to resolve this vexing problem.

Sincerely,

Charles Campbell

CC:ck

Enclosures

# ILER, CAMPBELL & ASSOCIATES

Barristers & Solicitors

150 Simcoe Street Toronto, Ontario Canada M5H 3G4 (416) 598-0103 FAX: 598-3484 Charles Campbell Brian Iler Murray Klippenstein Carol Lee Smith Associates: lan Anderson Garth Dee Faul H. Reinhardt Bruce D. Woodrow

November 24, 1989

T.P.A. Unit
E Holdings and Appeals
Deputy Minister
Revenue Canada, Customs and Excise
P.O. Box 10, Station A
Toronto, Ontario M5W 1A3

Dear Sir or Madam:

Re: Glad Day Bookshop Seizures:

- a) #3730-2/64T-2772
- b) #3730-2/64T-2454
- c) #3730-2/64T-2173
- d) #3730-2/64T-2336
- e) #3739-2/64T-2177
- f) #3730-2/64T-2176
- g) #55634/case 2263

I am enclosing Notices of Appeal with reference to the above-noted seizures. May we have your decisions forthwith.

We take the view that the delay in exercising your power under the <u>Customs Act</u> is a breach of my clients' rights of free expression under the Charter. Any delay prevents our client from bringing the matter to court for a proper judicial determination of the issue of alleged obscenity.

The magazines seized in #3730-2/64T-2772 are of a genre which, in my clients' experience, are sometimes seized and ordered detained -- and sometimes not. We would like to treat the pending litigation as a test case in order to resolve this vexing problem.

Sincerely,

Charles Campbell CC:ck Enclosures

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Revenue Canada Revenu Canada Customs and Excise Douanes el Accise

K 14D — REQUEST FOR RE-DETERMINATION — RE-APPRAISAL BY THE DEPUTY MINISTER DEMANDE DE NOUVELLE DÉTERMINATION — NOUVELLE ESTIMATION AU SOUS-MINISTRE

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Glad Day Bookshop, 598A Yonge St., Toronto, Ontario M4Y 123 Your file Votre référence

4545-2(RR)
T.P.A., Toronto Region
Box 10, Stn. A
Toronto, Ontario
MSW 1A3

December 5, 1989

Dear Sir:

This refers to your letter dated November 22, 1989 to appeal the decision on the "Notice of Detention" letter, file 3730-2/64T, 2173 classifying 25 magazines "Oriental Guys (OG#4)" as prohibited entry into Canada under the provision of tariff code 9956.

Enclosed are 2 partially completed form B2As which you are requested to complete where indicated (x) and return to the attention of the undersigned at the address indicated above.

An appeal for re-determination of tariff classification must be submitted within ninety (90) days of the date on the "Notice of Detention" letter.

Yours truly,

R. Ryan

Tariff and Values Administrator

Valuation Unit

RR:mo Encl.

Canada

Department of Reserve Revenue (Fundamental Laboratory) Manager de Revenu resons Charries di Access Glad Day Bookshop, 598A Yonge St., Toronto, Ontario M4Y 1Z3

Your Ne

Our file

4545-2 (RR) T.P.A., Toronto Region Box 10, Stn. A Toronto, Ontario M5W LA3

December 5, 1989

Dear Sir:

This refers to your letter dated November 22, 1989 to appeal the decision on the "Notice of Detention" letter, file 3730-2/64T 2176 classifying @ books 5-Movie Star Confidential, 16-Humongous Vo.5, 15-Harry Chess, 24 Hot Tricks Vol. 5" as prohibited entry into Canada under the provision of tariff code 9956.

Enclosed are 2 partially completed form B2As which you are requested to complete where indicated (x) and return to the attention of the undersigned at the address indicated above.

An appeal for re-determination of tariff classification must be submitted within ninety (90) days of the date on the "Notice of Detention" letter.

Yours truly,

R. Ryan

Tariff and Values Administrator

Valuation Unit

RR:mo Encl.

Canada

Department of National Revenue (Customs and Excise)

Glad Day Bookshop, 598A Yonge St., Toronto, Ontario M4Y 123 Your file Votre référence

4545-2 (RR)
T.P.A., Toronto Region
Box 10, Stn. A
Toronto, Ontario
M5W 1A3

7.7

December 5, 1989

Dear Sir:

This refers to your letter dated November 22, 1989 to appeal the decision on the "Notice of Detention" letter, file 3730-2/64T, 2177 classifying 27 Books - "5 - sex Stop Vol. #3/ 22 Hot Tricks Vol #5" as prohibited entry into Canada under the provision of tariff code 9956.

Enclosed are 2 partially completed form B2As which you are requested to complete where indicated (x) and return to the attention of the undersigned at the address indicated above.

An appeal for re-determination of tariff classification must be submitted within ninety (90) days of the date on the "Notice of Detention" letter.

Yours truly,

R Ryan

Tariff and Values Administrator

Valuation Unit

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Glad Day Bookshop, 598A Yonge St., Toronto, Ontario M4Y 123 Your file Votre rélérence

4545-2(RR)
T.P.A., Toronto Region
Box 10, Stn. A
Toronto, Ontario
M5W 1A3

December 5, 1989

7 7

Dear Sir:

This refers to your letter dated November 22, 1989 to appeal the decision on the "Notice of Detention" letter, file 3730-2/64T 2336 classifying 50 Magazines "Bear" as prohibited entry into Canada under the provision of tariff code 9956.

Enclosed are 2 partially completed form B2As which you are requested to complete where indicated (x) and return to the attention of the undersigned at the address indicated above.

An appeal for re-determination of tariff classification must be submitted within ninety (90) days of the date on the "Notice of Detention" letter.

Yours truly,

R. Ryan

Tariff and Values Administrator Valuation Unit

RR:mo Encl.

Canadä

Department of hasona Amenia Scattery and Licitud Ministère du Revenu national Observat et Accres Glad Day Bookshop, 598A Yonge St., Toronto, Ontario M4Y 123 Your file Votre référence

4545-2 (RR)

T.P.A., Toronto Region Box 10, Stn. A Toronto, Ontario M5W 1A3

7 ,

December 5, 1989

Dear Sir:

This refers to your letter dated November 22, 1989 to appeal the decision on the "Notice of Detention" letter, file 3730-2/64T 2772 classifying 15 magazines "5-Playguy, 5-In Touch, and 5 - Advocate Men" as prohibited entry into Canada under the provision of tariff code 9956.

Enclosed are 2 partially completed form B2As which you are requested to complete where indicated (x) and return to the attention of the undersigned at the address indicated above.

An appeal for re-determination of tariff classification must be submitted within ninety (90) days of the date on the "Notice of Detention" letter.

Yours truly,

R. Ryan Tariff and Values Administrator Valuation Unit

RR:mo Encl.

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TION FOR REQUEST JUSTIFICATION DE LA DEMANDE

-DITTER TILIZATION UNDER

SEC. 60 (1) (A) OF THE CUSTOMS ACT

TION/EXPLICATION:

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GLAD DAY BOOKSHOP

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MINISTERE DU REVENU NATIONAL - DOUATES ET ACCISE

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T.P.A. Unit
Toronto Region
P.O. Box 10 Station "A"
Toronto, Ontario
M5W 1A3
January 10, 1990

Glad Day Bookshop 598 Yonge St. Toronto, Ontario M4Y 173

Your file Votre référence

Our file Notre référence

T4545-2 (RR)

Adjustment No.: 00000503201874 Jan. 3/90 Original File No.: 37302/64T-2173 Nov. 1/89

and Date: Oct. 16, 1989

### B2 DECISION:

The Magazines - "Oriental Guys (4)" have been examined and are found to be obscene and prohibited entry into Canada under tariff code 9956.

Tariff code 9956 reads "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind (a) that are deemed to be obscene under subsection 159(8) of the Criminal Code".

Paragraphs 5 and 6(a), (1)(8) of the Custom's Memorandum D9-1-1, the Interpretive Policy Administration of Tariff Code 9956, were used as the guideline to prohibit said magazines,

Paragraph (5) reads: "Goods which are deemed to be obscone or hate propaganda under the Criminal Code are those of a dominant characteristic of which is the undue exploitation of sex and any one or more of the following projects, namely crime, horror, cruelty and violence".

Paragraph (6) reads: "The following goods insofar as they are learned to be obscene within the meaning of the terms as set forth above are to be classified under tariff code 9956 and their importation onto Canada prohibited:

- (a) Goods which depict or describe sexual acts that pappear to degrate or dehumanize any of the participants, including:
- (1) Depictions or descriptions of sex with violence, submission, coercion, ridicule, degradation, exploitation, or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure.
- (8) Depictions or descriptions of anal penetration including depictions or descriptions involving implements of all kinds.

Canadä

Department Ministère of National Revenue du Revenu national (Customs and Excise) (Douanes et Accise)

Your file Votre référence

Our file Notre rélérence

This represents a Tariff and Values Administrator's decision under Sec. 60 of the Customs Act. Any appeal thereof must be made to the Deputy Minister of National Revenue & Excise on Form B2 (K14D) within 90 days from the date of this decision.

If you choose to export the above mentioned goods, you must forward a statement to the undersigned at the address indicated above that you wish to export the goods and that you will not appeal the prohibited ruling. The exportation of the goods will be at your expense, and you must make all arrangements for pick-up and transportation of the goods. Since Canada Post prohibits the use of the mail system for the transportation of these goods, you must make arrangements for a Customs bonded carrier, such as a bonded courier. As the courier must be approved by Customs, please contact the Customs Office at the point of entry at (415) 270-6711 before making a final commitment to the courier.

Tariff and Values Administrator Torunto Region



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"PROHIBITED"

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B 2-3 (11/87)

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Glad Day Bookshop 598 Yonge St. Toronto, Ontario M4Y 1Z3

T.P.A. Unit . Toronto Region P.O. Box 10 Station "A" Toronto, Ontario M5W 1A3 January 10, 1990

Your file Votre référence

Our file Notre référence

T4545-2 (RR)

Adjustment No.: 00000503201896 Jan. 3/90

Original File No.: 37302/64T-2176 and Date: Oct. 10/89

#### B2 DECISION:

The Books "Movie Star Confidential" "Humongous Vo. 5" "Harry Chess" and "Hot Tricks Vol. 5" have been examined and are found to be obscene and prohibited entry into Canada under tariff code 9956.

Tariff code 9956 reads "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind (a) that are deemed to be obscene under subsection 159(3) of the Criminal Code".

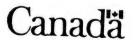
Paragraphs 5 and 6(a), (1)(3)(8) of the Custom's Memorandum D9-1-1, the Interpretive Policy Administration of Tariff Code 9956, were used as the guideline to prohibit said Books. (

Paragraph (5) reads: "Goods which are deemed to be obscene or hate propaganda under the Criminal Code are those of a dominant characteristic of which is the undue exploitation of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence".

Paragraph (6) reads: "The following goods insofar as they are deemed to be obscene within the meaning of the terms as set forth above are to be classified under tariff code 9956 and their importation onto Canada

- (a) Goods which depict or describe sexual acts that appear to degrade or dehumanize any of the participants, including:
- (1) Depictions or descriptions of sex with violence, submission, coercion, ridicule, degradation, exploitation, or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure.
- (3) Depictions and descriptions of bondage, involuntary servitude and the state of human beings subjected to external control in a sexual context.

1



Department Ministère of National Revenue du Revenu national (Customs and Excise) (Douanes et Accise)

Your file Votre référence

Our file Notre référence

(3) Depictions or descriptions of anal penetration including depictions or descriptions involving implements of all kinds.

This represents a Tariff and Values Administrator's decision under Sec. 60 of the Customs Act. Any appeal thereof must be made to the Deputy Minister of National Revenue & Excise on Form B2 (K14D) within 90 days from the date of this decision.

If you choose to export the above mentioned goods, you must forward a statement to the undersigned at the address indicated above that you wish to export the goods and that you will not appeal the prohibited ruling. The exportation of the goods will be at your expense, and you must make all arrangements for pick-up and transportation of the goods. Since Canada Post prohibits the use of the mail system for the transportation of these goods, you must make arrangements for a Customs bonded carrier, such as a bonded courier. As the courier must be approved by Customs, please contact the Customs Office at the point of entry at (416) 273-6711 before making a final commitment to the courier.

R. Ryan

Tariff and Values Administrator

Toronto Region

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### "PROHIBITED"

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B 2-3 (11/87)

Canadä



T.P.A. Unit . Toronto Region P.O. Box 10 Station "A" Toronto, Ontario M5W 1A3 January 10, 1990

Glad Day Bookshop 598 Yonge St. Toronto, Ontario M4Y 1Z3

Your file Votre référence

Our file Notre référence

T4545-2 (RR)

Adjustment No.: 00000503201932 Jan. 3/90

Original File No.: 37302/64T-2177 and Date: Oct. 16, 1989

#### B2 DECISION:

The Books "Sex Stop, Vol. #3", "Hot Tricks, Vol. 5" have been examined and are found to be obscene and prohibited entry into Canada under tariff code 9956.

Tariff code 9956 reads "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind (a) that are deemed to be obscene under subsection 159(3) of the Criminal Code".

Paragraphs 5 and 6(a), (1)(8) of the Custom's Memorandum D9-1-1, the Interpretive Policy Administration of Tariff Code 9056, were used as the quideline to prohibit said Books.

Faragraph (5) reads: "Goods which are deemed to be obscore or hate propaganda under the Criminal Code are those of a dominant characteristic of which is the undue exploitation of sem and any one or more of the following subjects, namely srime, horror, cruelty and violence".

Faragraph (1) reads: "The following goods insofar as they are deemed to be obscene within the meaning of the terms as set forth above are to be plassified under tariff code 9956 and their importation onto Tanada prohibited:

- (a) Goods which depict or describe sexual acts that appear to degrade or dehumanize any of the participants, including:
- (1) Depictions or descriptions of sex with violence, submission, coercion, ridicule, degradation, exploitation, or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure.
- (8) Depictions or descriptions of anal penetration including depictions or descriptions involving implements of all kinds.

Canadä

Department of National Revenue (Customs and Excise) (Douanes et Accise)

Ministère du Revenu national

Your file Votre référence

Our file Notre référence

This represents a Tariff and Values Administrator's decision under Sec. 60 of the Customs Act. Any appeal thereof must be made to the Deputy Minister of National Revenue & Excise on Form B2 (K14D) within 90 days from the date of this decision.

If you choose to export the above mentioned goods, you must forward a statement to the undersigned at the address indicated above that you wish to export the goods and that you will not appeal the prohibited ruling. The exportation of the goods will be at your expense, and you must make all arrangements for pick up and transportation of the goods. Since Cauada Post prohibits the use of the mail system for the transportation of these goods, you must make arrangements for a Customs bonied carrier, such as a bonded courier. As the courier must be approved by Customs, please contact the Customs Office at the point of entry at (415) 278-6711 before making a final commitment to the courier.

3. Byan

o. Ayan Tariff and Values Administrator

Toronto Region

Canadä

Department of National Revenue du Revenu national (Customs and Excise) (Douanes et Accise)

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Glad Day Bookshop 598 Yonge St. Toronto, Ontario M4Y 123 T.P.A. Unit
Toronto Region
P.O. Box 10 Station "A"
Toronto, Ontario
M5W 1A3
January 10, 1990

Your file Votre référence

Our file Notre référence

T4545-2 (RR)

Adjustment No.: 00000503201885 Jan. 3/90 Original File No.: 37302/64T-2336 Nov. 1/89

and Date:

#### B2 DECISION:

The Magazines - "Bear" have been examined and are found to be obscene and prohibited entry into Canada under tariff code 9956.

Tariff code 9956 reads "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind (a) that are deemed to be obscene under subsection 159(8) of the Criminal Code".

Paragraphs 5 and 6(a), (1)(3) of the Custom's Memorandum D9-1-1, the Interpretive Policy Administration of Tariff Code 9956, were used as the guideline to prohibit said magazines.

Paragraph (5) reads: "Guods which are deemed to be obscene or hate propaganda under the Criminal Code are those of a dominant characteristic of which is the undue emploitation of sem and any one ex more of the following subjects, namely trime, horror, cruelty and violence".

Paragraph (8) reads: "The following goods insofar as they are described to be obscience within the meaning of the terms as set forth above are to be classified under tariff code 9956 and their importation onto Canada prohibited:

- (a) Goods which depict or describe sexual accombat suggests to degrade to degrade to
- till Lagictions or descriptions of sex with violence, Submission, spercion, ridicule, degradation, exploitation, or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure.
- (8) Depictions or descriptions of anal penetration including depictions or descriptions involving implements of all kinds.

Canad'ä

Department Ministère of National Revenue (Customs and Excise) (Douanes et Accise)

Your file Votre référence

Our file Notre référence

This represents a Tariff and Values Administrator's decision under Sec. 60 of the Customs Act. Any appeal thereof must be made to the Deputy Minister of National Revenue & Excise on Form B2 (K14D) within 90 days from the date of this decision.

If you choose to export the above mentioned goods, you must forward a statement to the undersigned at the address indicated above that you wish to export the goods and that you will not appeal the prohibited ruling. The exportation of the goods will be at your expense, and you must make all arrangements for pick-up and transportation of the goods. Since Canada Post prohibits the use of the mail system for the transportation of these goods, you must make arrangements for a Customs bonded carrier, such as a bonded courier. As the courier must be approved by Customs, please contact the Customs Office at the point of entry at (416) 278-6711 before making a final commitment to the courier.

Elygon R. 794n Tacifé and Volues Administratus Toronto Region



Canadä

Department of National Revenue (Customs and Excise) Ministère du Revenu national (Douanes et Accise)

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Glad Day Bookshop 598 Yonge St. Toronto, Ontario T.P.A. Unit
Toronto Region
P.O. Box 10 Station "A"
Toronto, Ontario
M5W 1A3
January 10, 1930

Your file Votre référence

Our file Notre référence

T4545-2 (RR)

Adjustment No.: 00000503201921 Jan. 3/90

Original File No.: 37302/64T-2772 and Date: Nov. 20, 1989

B2 DECISION:

The 15 Magazines "5 Playguy" "5-In Touch", "5-Advocate Men" have been examined and are found to be obscene and prohibited entry into Canada under tariff code 9956.

Tariff code 9956 reads "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind (a) that are deemed to be obscene under subsection 159(8) of the Criminal Code".

Paragraphs 5 and 6(a), (1)(8) of the Custom's Memorandum DS 1-1, the Interpretive Policy Administration of Tariff Code 9956, were used as the guideline to prohibit said Magazines:

Paragraph (5) reads: "Goods which are deemed to be obscene or hate propaganda under the Triminal Code are those of a dominant characteristic of which is the units supplicitation of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence".

Paragraph (6) reads: "The following goods inmofar as they are deemed to be obscene within the meaning of the terms as set forth above are to be classified under tariff code 9950 and their importation onto Canada prohibited:

van Terik selek depist di Deastik derud da tota tian egyak du Dagteis i Gesimanlis any of the participants, including:

(1) Depictions or descriptions of sex with violence, submission, specolon, ridicule, degradation, exploitation, or humiliation of any human being, whether sexually explicit or not, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure.

(8) Depictions of descriptions of analogenetration including depictions or descriptions involving implements of all kinds.  $^{\prime\prime}$ 

Canad'ä

Department Ministère
of National Revenue du Revenu national
(Customs and Excise) (Douanes et Accise)

Your file Votre référence

Our file Notre référence

This represents a Tariff and Values Administrator's decision under Sec. 60 of the Customs Act. Any appeal thereof must be made to the Deputy Minister of National Revenue & Excise on Form B2 (K14D) within 90 days from the date of this decision.

If you choose to export the above mentioned goods, you must forward a statement to the undersigned at the address indicated above that you wish to export the goods and that you will not appeal the prohibited ruling. The exportation of the goods will be at your expense, and you must make all arrangements for pick-up and transportation of the goods. Since Canada Post prohibits the use of the mail system for the transportation of these goods, you must make arrangements for a Customs bonded carrier, such as a bonded courier. As the courier must be approved by Customs, please contact the Customs Office at the point of entry at (416) 270-6711 before making a final commitment to the courier.

Pix yn R. Tysh Tarifi and Values Administrator Tanonto de rion

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Department of National Revenue (Customs and Excise) Ministère du Revenu national (Douanes et Accise)

I IMPORTER NAME AND ADDRESS NOW ET ADRESSE DE L'IMPORTATEUR	2 TRANSACTION NO N° DE TRANSACTION 00000 50320	192-1	
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Canadä'

Revenue Canada Douanes et Accise

Memo to / Mem Dour Bob Dafour

From / De Linda Murphy

Telephone Np5/112 Ce prophone

Dapril 18, 1990

Remarks / Remarques

Further to my telephone conversation of April 18, with Chris Bodanis, attached are B2 (K14D) forms which were mailed directly to the Deputy Minister's office. I am sure you will appreciate that these appeals are considered quite sensitive. The material and accompanying documentation should be returned to our

Thanks for your assistance.

office quickly for our review.

5 - K14D (2) Blief Danz

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EMORANDUM FOR:

L. Murphy Prohibited Importations, Unit X, Tariff Programs, Ottawa, Ontario KIA OL5

Toronto Region P.O. Box 10 Station "A" Toronto, Ontario M5W 1A3 May 1, 1990

Your file Votre référence

Our file Notre référence T4500-1 (PA)

Adjust No: various - see attached

SUBJECT

K14D TRANSACTION Number & DATE: various - see attached TVA DECISION TRANSAC No. & DATE: various - see attached ORIGINAL TRANSAC Number & DATE: various - see attached

IMPORTER'S NAME and ADDRESS: Glad Day Bookshop

598A Yonge St. Toronto, Ontario

M4Y 1Z3

EXPORTER NAME and ADDRESS: BookPeople - Berkeley, CA

Glad Day Bookshop - boston, MA

International Wavelength - San Franc. CA

COA, San Francisco, CA

DESCRIPTION: Various Books and Magazines

APPELLANT'S CLAIM: It is the importer's contention that the subject books and magazines should NOT be prohibited entry for the reasons indicated on the FORM B2.

T.V.A.'s DECISION: The books titled "Sex Stop vol. 3, Hot tricks vol. 5, Movie Star confidential. Humongous, Vol. 5, Harry Chess, and Magazines titled Playguy, In touch, Advocate Men, Oriental Guys & Bear have been ruled inadmissible under Tariff Code 9956 in accordance with paragraphs 250(a), 251(1), 258(8) and 253(3) of D9-1-1. It is recommended that the decision rendered be upheld.

The books and magazines are being forwarded under separate cover.

Copies of the relative documents are attached.

Paul Allen

Tariff and Values Administrator.

Unit "E".

Canada

Department of National Revenue (Customs and Excise) (Douanes et Accise)

Ministère du Revenu national



Our file Notre référence

- 1. B2 (K14D) #00000509401891 90/04/20 B2 (B2A) #00000503201932 90/01/09 Original Transaction # 3730-2/64T-2177 V
- 2. B2 (K14D) #00000509401904 90/04/20 B2 (B2A) #00000503201921 90/01/03 Original Transaction # 3730-2/64T-2772
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- 5. B2 (K14D) #00000509401880 90/04/20 B2 (B2A) #00000503201896 90/01/03 Original Transaction # 3730-2/64T-2176

Canadä'

Department of National Revenue

Ministère du Revenu national (Customs and Excise) (Douanes et Accise)

57498

Manager
Prohibited Importations Unit
Customs and Excise
6th Floor
Connaught Building
MacKenzie Avenue
Ottawa, Ontario
KIA OL5

Your file Votre référence

Our file Notre rélérence

P. O. Box 10, Station "A'
Toronto, Ontario
M5W 1A3

MAY 1/90

Re: Regional Control No. 3730-2/64T 2177, 2772, 2173, 2336, 2176

Port of Entry Control No. Co1807, Co2399, Co1763, Co1948, Co180.

KIHD

Attached is a copy of form which outlines the details of goods suspected of being classified under tariff code 9956 of Schedule VII to the Customs Tariff. The following goods listed in the attached form have been forwarded to you under separate cover, by courier or priority post:

It is requested that you review the above-noted goods and advise us of your opinion as to whether or not they fall within the prohibitory provisions of tariff code 9956.

Yours sincerely,

Commodity Specialist

Prohibited Importations Unit

Toronto Region

Canadä

Department of National Revenue (Custonia and Excise) Ministère du Revenu national (Douanes et Accise)

DATE:

DIRECTOR GENERAL:

## PORNOGRAPHY WORKSHEET

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EXPORTER: BOOKPEOPLE	
2929 FIFTH ST	<u> </u>
BERKELEY, CA.	94710
	•
T.V.A.	
REGION: TORONTO	
DATE OF SECTION 63: APRIC 4,19	<u>90</u>
DESCRIPTION OF GOODS: BOOK	
BETA VHS EUROPEAN FORMAT VOI	
TITLE: HARRY CHESS / MOU	DIE STAR CONFIDENTIAL
A PELENCED.	-
PROHIBITED: RELEASED:	DATE: May 15/90
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107	DATE: 3/3/70
	DATE: 16/3/4
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DIRECTOR GENERAL:	DATE:

E: HARRY CHESS/MOUIE STAR CONFIDENTIAL CONTENT REVIEW: MOUIE STAR CONFIDENTIAL Depiction of Dondage with degradation - group ejaculation on anal intercourse TARRY CHESS Depiction of Bondage

SECTION 63 REDETERMINATION: X  REGIONAL REFERRAL:
CASE NO: 57498 NO. OF ITEMS IN CASE:
NAME OF IMPORTER: GLAD DAY BOOKSHOP
598A YONGE ST.
TORONTO, ONTARIO M44 123
EXPORTER: BOOKPEORE
2929 FIFTH ST.
BERKELEY, CA. 94710
T.V.A.
REGION: TORONTO
DATE OF SECTION 63: APRIL 4, 1990
DESCRIPTION OF GOODS: BOOK
BETA VHS EUROPEAN FORMAT VOL NUMBER:
TITLE: HOT TRICKS
PROHIBITED: RELEASED:
1ST REVIEW OFFICER: # 190/1721 DATE: May 15790 May 5/20
2ND REVIEW OFFICER: #
MANAGER:
DIRECTOR: $1/0$ DATE: $17/5/90$ .
DIRECTOR GENERAL: DATE:

HOT TRICKS CONTENT REVIEW: This book was previously reviewedand prohibited under case # 55634 - see affached description of contents

Hot Tricks: True Revelations And Strange Happenings From 18 Wheeler, Vol. 5, edited by John Dagion, (Leyland Publication, San Francisco, 1989) is a collection of short stories about truck stop adventures involving homosexual affairs. Although Mr. Dagion maintains that these are "tales of old told by old tellers; and not stories about dirty old men who do things to the unwilling", it is evident that there are numerous instances in this book which describe sex involving juveniles. Also, it is apparent that numerous scenes describe incestuous relations, namely fathers and sons in otherwise intimate situations.

When analyzing this book, one must consider whether the author is "serious minded" and if the book represents a work of "genuine literary merit" (R. v. Brodie, et al. (1962)). The scenes describe sex involving humiliation, coercion, and suffering, anal penetration and sexual activities involving degradation such as the use of urine for the purpose of sexual gratification. In short, people are subjected to degrading and violent treatment, all of which is "eroticized" for sexual gratification. It is our opinion, therfore, that this book should be prohibited under the prohibitory guidelines of tariff code 9956.

SECTION 63 REDETERMINATION: REGIONAL REFERRAL:
CASE NO: 57498 NO. OF ITEMS IN CASE:
NAME OF IMPORTER: GLAD BAY BOOKSHOP
598A YONGEST.
TORONTO, ONTARIO MAY 123
EXPORTER: BOOK PEOPLE
2929 FIFTH ST.
BERKELEY, CA. 947/0
<u> </u>
REGION: TORONTO
REGION:
DATE OF SECTION 63: April 4, 1990
DESCRIPTION OF GOODS: BOOK
BETA VHS EUROPEAN FORMAT VOL NUMBER:
TITLE: Humongous
PROHIBITED: RELEASED:
1ST REVIEW OFFICER: # 190 DATE: Mw 5/90
2ND REVIEW OFFICER:# 111 DATE: 5/15/90
MANAGER: DATE:
DIRECTOR: 110 DATE: 17/5/90
DATE:

Case 57498

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CONTENT REVIEW:	
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under use # 55634 - See a Hacked	age for
description of contents.	:
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Humongous: True Gay Encounters, Volume 5, edited by Winston Leyland, (Leyland Publications, San Francisco: 1989) is a book composed of a collection of short stories which are based on true sexual tase histories involving homosexual affairs. Mr. Leyland, in the preface of the book, maintains that "the fact that they (the stories) appear in this book does not mean that the editor or publisher necessarily approve of those acts which may be illegal...". There are numerous instances in this book which describe bondage and sex associated with pain for purposes of sexual arousal (torture, and S/M activities). As well, there are scenes which describe sex involving juveniles, incestuous relations between a brother and sister, humiliation, coercion, anal penetration and sexual activities involving degradation, such as the use of catheters and enemas; urine and feces for the purpose of sexual gratification.

When analyzing this book, one must consider whether the author is "serious minded" and if the book represents a work of "genuine literary merit" (R. v. Brodie, et al, 1962).

In short, throughout this book people are subjected to degrading and violent treatment, all of which is "eroticized" for sexual gratification. It is our opinion, therefore, that this book should be prohibited under the prohibitory guidelines of tariff code 9956.

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T.V.A.	
REGION: TORONTO	,
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Case 57448

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AUTHOR (IF APPLICABLE) John Daycon (ed.)	TRS CASE LOG # F
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SECTION 63 REDETERMINATION:	
CASE NO: 57498 NO. OF ITEMS	IN CASE:
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REGION: TORONTO	
DATE OF SECTION 63: APRIL 4, 1996  DESCRIPTION OF GOODS: BOOK  BETA VHS EUROPEAN FORMAT VOL  TITLE: HOT TRICKS	Number:
PROHIBITED: RELEASED:	DATE: May 15790  DATE: 5/15/90
MANAGER:	DATE:
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LE: HOT TRICKS VOL. 5 OF\_ CONTENT REVIEW: This book was previously reviewed and prohibited under case # 55634 - see affached description of contents

Hot Tricks: True Revelations And Strange Happenings From 18 Wheeler, Vol. 5, edited by John Dagion, (Leyland Publication, San Francisco, 1989) is a collection of short stories about truck stop adventures involving homosexual affairs. Although Mr. Dagion maintains that these are "tales of old told by old tellers; and not stories about dirty old men who do things to the unwilling", it is evident that there are numerous instances in this book which describe sex involving juveniles. Also, it is apparent that numerous scenes describe incestuous relations, namely fathers and sons in otherwise intimate situations.

When analyzing this book, one must consider whether the author is "serious minded" and if the book represents a work of "genuine literary merit" (R. v. Brodie, et al. (1962)). The scenes describe sex involving humiliation, coercion, and suffering, anal penetration and sexual activities involving degradation such as the use of urine for the purpose of sexual gratification. In short, people are subjected to degrading and violent treatment, all of which is "eroticized" for sexual gratification. It is our opinion, therfore, that this book should be prohibited under the prohibitory guidelines of tariff code 9956.

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REGIONAL REFERRAL:	
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Revenue Canada Customs and Excise Revenu Canada Douanes et Accise

Ottawa, Canada K1A 0L5

Memorandum for:

Mémorandum pour:

Miss Sheila Batchelor, Assistant Deputy Minister, Customs Programs. Refer to file Rélérence

454-2/57498 TRS 5312

July 12, 1990.

Comments Remarques

Subject: Requests for Re-determination by The Deputy Minister from Glad Day Bookshop

#### Purpose

The purpose of this memorandum is to bring to your attention four recent requests for re-determination which have been received from Glad Day Bookshop. The requests for redetermination under s.63(1)(a) of the <u>Customs Act</u> involve nine (9) publications. The material has been reviewed and it is our opinion that it should be prohibited entry into Canada under tariff code 9956.

Four of the publications, Sex Stop, Vol. 3, Bear Magazine, Hot Tricks, Vol. 5, (previously reviewed and prohibited) and Humongous, Vol. 5 (previously reviewed and prohibited - part of the shipment that is the basis of the court action), contain material involving numerous examples of degradation and violence in a sexual context. They are considered clearly to fall within the interpretive guidelines for tariff code 9956. It should be noted that the bookstore continues to order material from their American suppliers that has been previously prohibited, despite the fact that they have been informed through respective legal counsel that prohibited material challenged before a court will remain such until the court rules otherwise.

The remaining five (5) publications - Oriental Gays, Harry Chess/Movie Star Confidential, In Touch, Advocate Men and Playguy - contain some material that falls within the prohibitory guidelines; however, these are not considered to be "strong" prohibitions.

#### Background

In Touch, Advocate Men and Playguy are glossy gay magazines containing male pictorials, short stories and informational articles relevant to the gay life style.

Although several other issues of these U.S. magazines have been reviewed in advance of importation by the Prohibited Importations Directorate, our records show that, of the particular issues cited, only Playguy was reviewed as a blueline, reviewed again as a final and allowed importation into Canada. The publications in question are all back issues from 1989 and appear to be the U.S. editions, as they have not been edited to comply with D9-1-1. They all contain descriptions of anal penetration and intercourse (approximately five to seven references per publication) within the format of "short fantasy" stories approximately four to five pages in length.

When Mr. Moldenhauer of Glad Day Bookshop requested a re-determination under s.60 of the <u>Customs Act</u> in November 1989, his legal counsel, Charles Campbell, wrote to the Prohibited Importations Directorate (copy of letter attached). Among the other matters mentioned in this letter, the final paragraph refers to these three publications, <u>In Touch</u>, <u>Advocate Men</u> and <u>Playguy</u>.

Harry Chess/Movie Star Confidential is a soft cover book of stories in cartoon format. There is one depiction of anal intercourse, one of degradation and one of bondage.

Oriental Guys is a glossy publication containing male pictorials, short stories and informational articles relevant to a gay life style. There are four descriptions of anal penetration.

#### Conclusion

We must enforce the interpretative policy of Memorandum D9-1-1 in a consistent, uniform and, above all, objective manner. It is, therefore, our recommendation that the prohibitions of the nine publications be upheld. We must remain cognizant that the prohibition of same, and similar, material is currently before the District Court of Ontario. However, it is our opinion that the prohibition of the latter five publications discussed above would be difficult to defend as obscene, should they be appealed to a court.

I am, of course, available to discuss this matter further with you, should you wish, at your convenience.

J.F. Shearer, Director General, Tariff Programs. Ottawa, Canada K1A 0L5

Your file Votre référence

Our file Notre référence

Mr. Jearld Moldenhauer Glad Day Bookshop Inc. 598A Yonge Street, Toronto, Ontario. M4Y 1Z3

4545-2/57498 TRS 5312

July 19, 1990

Dear Mr. Moldenhauer:

This refers to your Request for Re-determination of April 4, 1990, in which you dispute the decision prohibiting the importation of one magazine entitled "Oriental Guys, No. 4".

The magazine in question has been reviewed and a Deputy Minister's decision has been rendered, pursuant to subsection 63(3) of the <u>Customs Act</u>. The magazine has been correctly classified as obscene under tariff code 9956 of Schedule VII to the <u>Customs Tariff</u> because it contains descriptins of anal intercourse. Consequently, its importation is prohibited.

I am enclosing, for your information, extracts from the <u>Customs Tariff</u> and the <u>Customs Act</u>. You will note that there is no differentiation between importing for either personal or commercial purposes.

Pursuant to subsection 67(1), as modified by section 71 of the <u>Customs Act</u>, an appeal from this decision may be made to a court, as defined in subsection 71(2), within ninety calendar days of July 19, 1990.

Pursuant to section 102 of the <u>Customs Act</u>, prohibited goods, at the request of an importer, may be abandoned to the Crown or exported. For further details in this regard, please contact R. Ryan, T.V.A., Revenue Canada, Customs and Excise, P.O. Box 10, Station "A", Toronto, Ontario M5W 1A3.

Yours truly,

Margara Gillis (Ms.),

A/Manager,

Prohibited Importations,

Tariff Programs,

6th Floor, Connaught Building.

Canadä'

Department of National Revenue (Customs and Excise)

Deputy Minister

Sous-ministre

Ottawa, Canada K1A 0L5

File No./N° de dossier 4545-2-1 Case No./N° de cas 57498 (TRS 5312)

RECORD OF DECISION In re the Customs Act and

FICHE DE DECISION Loi sur les douanes et

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Name and Address of Importer/Nom et adresse de l'importateur	
Glad Day Bookshop Inc.,	
598A Yonge Street,	
Toronto, Ontario. M4Y 1Z3	
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Description of Goods/Description des marchandises	
One book entitled *Oriental Guys	s, No. 4"
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Subsequent to a request by, or on behalf of, the above-noted importer pursuant to section 63 of the <i>Customs Act</i> , or subsequent to a redetermination made by the Deputy Minister pursuant to section 64 of the said <i>Act</i> , a re-determination of the tariff classification has been made and the above-mentioned goods have been classified under	Suite à une demande en vertu de l'article 63 de la Loi sur les douanes par l'importateur susmentionné, ou en son nom, ou suite à un réex amen en vertu de l'article 64 de ladite Loi par le Sous-ministre, un réex amen du classement tarifaire a été effectué et les marchandises son visées aux termes du
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Canadä'

Department of National Revenue (Customs and Excise)

Revenu Canada Douanes et Accise

Ottawa, Canada K1A 01.5

Mr. Jearld Moldenhauer Glad Day Bookshop Inc. 598A Yonge Street, Toronto, Ontario. M4Y 123 Your file Votre référence

Our file Notre rélérence

4545-2/57498 TRS 5312

July 19, 1990

Dear Mr. Moldenhauer:

This refers to your Request for Re-determination of April 4, 1990, in which you dispute the decision prohibiting the importation of three magazines entitled "Harry Chess/Movie Star Confidential", "Humongous, No. 5" and "Hot Tricks, Vol. 5".

The magazines in question have been reviewed and a Deputy Minister's decision has been rendered, pursuant to subsection 63(3) of the <u>Customs Act</u>. The magazines have been correctly classified as obscene under tariff code 9956 of Schedule VII to the <u>Customs Tariff</u> because they depict scenes of anal intercourse, bondage, sex associated with pain, sex with degradation, incest and sex involving juveniles. Consequently, its importation is prohibited.

I am enclosing, for your information, extracts from the <u>Customs Tariff</u> and the <u>Customs Act</u>. You will note that there is no differentiation between importing for either personal or commercial purposes.

Pursuant to subsection 67(1), as modified by section 71 of the <u>Customs Act</u>, an appeal from this decision may be made to a court, as defined in subsection 71(2), within ninety calendar days of July 19, 1990.

Pursuant to section 102 of the <u>Customs Act</u>, prohibited goods, at the request of an importer, may be abandoned to the Crown or exported. For further details in this regard, please contact R. Ryan, T.V.A., Revenue Canada, Customs and Excise, P.O. Box 10, Station "A", Toronto, Ontario M5W 1A3.

Yours truly,

Margaret Gilles (Ms.), A/Manager, Prohibited Importations, Tariff Programs, 6th Floor, Connaught Building.

Canad'ä

Department of National Revenue



Revenue Canada , Customs and Excise Revenu Canada Douanes et Accise



Deputy Minister

Sous-ministre

Ottawa, Canada K1A 0L5

File No./N° de dossier

4545-2-1

Case No./N° de cas

57498 (TRS 5312)

#### RECORD OF DECISION In re the *Customs Act* and

FICHE DE DECISION Loi sur les douanes et

Name and Address of Importer/Nom et adresse de l'importateur Glad Day Bookshop Inc.,	
598A Yonge Street,	
Toronto, Ontario. N4Y 1Z3	
Description of Goods/Description des marchandises	
Three books entitled "Movie Star Confidential/Harry (	Chess",
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Canadä'

Deputy Minister of National Revenue for Customs and Excise Le Sous-ministre, Revenu national, Douanes et Accise

Department of National Revenue (Customs and Excise)

Ottawa, Canada K1A 0L5

Mr. Jearld Moldenhauer Glad Day Bookshop Inc. 598A Yonge Street, Toronto, Ontario. M4Y 1Z3 Your file Votre référence

Our file Notre rélérence

4545-2/57498 TRS 5312

July 19, 1990

Dear Mr. Moldenhauer:

This refers to your Request for Re-determination of April 4, 1990, in which you dispute the decision prohibiting the importation of one book entitled "Sex Stop, Vol. 3".

The book in question has been reviewed and a Deputy Minister's decision has been rendered, pursuant to subsection 63(3) of the <u>Customs Act</u>. The book has been correctly classified as obscene under tariff code 9956 of Schedule VII to the <u>Customs Tariff</u> because it depict scenes of anal intercourse, sex with force, degradation, humiliation and coercion. Consequently, its importation is prohibited.

I am enclosing, for your information, extracts from the <u>Customs Tariff</u> and the <u>Customs Act</u>. You will note that there is no differentiation between importing for either personal or commercial purposes.

Pursuant to subsection 67(1), as modified by section 71 of the <u>Customs Act</u>, an appeal from this decision may be made to a court, as defined in subsection 71(2), within ninety calendar days of July 19, 1990.

Pursuant to section 102 of the <u>Customs Act</u>, prohibited goods, at the request of an importer, may be abandoned to the Crown or exported. For further details in this regard, please contact R. Ryan, T.V.A., Revenue Canada, Customs and Excise, P.O. Box 10, Station "A", Toronto, Ontario M5W 1A3.

Yours truly,

Margeret Gillis (Ms.), A/Marager,

Prohibited Importations, Tariff Programs,

6th Floor, Connaught Building.

Canadä<sup>\*</sup>

of National Revenue (Customs and Excise du Revenu national (Douanes et Accise)



Revenue Canada Customs and Excise Revenu Canada Douanes et Accise

Deputy Minister

Sous-ministre

Ottawa, Canada K1A 0L5

File No./N° de dossier 4545-2-1 Case No./N° de cas 57498 (TRS 5312)

#### RECORD OF DECISION In re the Customs Act and

FICHE DE DECISION Loi sur les douanes et

Name and Address of Importer/Nom et adresse de l'importateur	
Glad Day Bookshop Inc.,	
598A Yonge Street,	
Toronto, Ontario M4Y 1Z3	
Description of Goods/Description des marchandises	
One book entitled "Sex Stop, Vol.	3 "
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Subsequent to a request by, or on behalf of, the above-noted importer pursuant to section 63 of the <i>Customs Act</i> , or subsequent to a redetermination made by the Deputy Minister pursuant to section 64 of the said <i>Act</i> , a re-determination of the tariff classification has been made and the above-mentioned goods have been classified under	Suite à une demande en vertu de l'article 63 de la Loi sur les douanes par l'importateur susmentionné, ou en son nom, ou suite à un réexamen en vertu de l'article 64 de ladite Loi par le Sous-ministre, un réexamen du classement tarifaire a été effectué et les marchandises sont visées aux termes du
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16.7.90 Dated/Date	Deputy Minister of National Revenue for Gueroms and Excise Le Sous-ministre, Revenu national, Douanes et Accise

Canadä'

Department of National Revenue (Customs and Excise)

Ottawa, Canada K1A 0L5

Your file Votre référence

Mr. Jearld Moldenhauer Glad Day Bookshop Inc. 598A Yonge Street, Toronto, Ontario. M4Y 1Z3

Our file Notre référence

4545-2/57498 TRS 5312

July 19, 1990

Dear Mr. Moldenhauer:

This refers to your Request for Re-determination of April 4, 1990, in which you dispute the decision prohibiting the importation of four magazines entitled "Bear", "Advocate Men, November 1989" "In Touch, No. 154" and "Playguy, December 1989".

The magazines in question have been reviewed and a Deputy Minister's decision has been rendered, pursuant to subsection 63(3) of the <u>Customs Act</u>. The magazines have been correctly classified as obscene under tariff code 9956 of Schedule VII to the <u>Customs Tariff</u>. With respect to the magazine entitled "Bear", it has been correctly classified because it contains descriptions of anal intercourse, bondage, sex with degradation and sex with violence. With respect to the three remaining magazines, they have been correctly classified because they contain descriptions of anal intercourse and anal penetration. Consequently, their importation is prohibited.

I am enclosing, for your information, extracts from the <u>Customs Tariff</u> and the <u>Customs Act</u>: You will note that there is no differentiation between importing for either personal or commercial purposes.

Pursuant to subsection 67(1), as modified by section 71 of the <u>Customs Act</u>, an appeal from this decision may be made to a court, as defined in subsection 71(2), within ninety calendar days of July 19, 1990.

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Pursuant to section 102 of the <u>Customs Act</u>, prohibited goods, at the request of an importer, may be abandoned to the Crown or exported. For further details in this regard, please contact R. Ryan, T.V.A., Revenue Canada, Customs and Excise, P.O. Box 10, Station "A", Toronto, Ontario M5W 1A3.

Yours truly,

Margaret Gillis (Ms.),

A/Manager,

Prohibited Importations,

Tariff Programs,

6th Floor, Connaught Building,

Deputy Minister

Sous-ministre

Ottawa, Canada K1A 0L5

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Glad Day Bookshop Inc.,	
598A Yonge Street,	
Toronto, Ontario. M4Y 1Z3	
Description of Goods/Description des marchandises	
Four Magazines entitled "Bear"	1
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"In To	ouch 'No. 154"
. "Playg	guy December 1989*
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Department of National Revenue (Customs and Excise)

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#### ONTARIO COURT OF JUSTICE (GENERAL DIVISION)

BETWEEN:

## GLAD DAY BOOKSHOP INC. and JEARLD MOLDENHAUER

Appellants

- and -

## DEPUTY MINISTER of NATIONAL REVENUE for CUSTOMS and EXCISE

Respondent

#### NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Ontario Court of Justice (General Division) from the determinations of the Deputy Minister of National Revenue for Customs and Excise, notification of said determinations given on July 19, 1990.

THE APPELLANTS ASK that the Court determine that the materials referenced by Control Numbers CO 1807, CO 1806, CO 1949, CO 2399, CO 1763, seized and detained by Canada Customs, are not obscene.

THE GROUNDS OF THE APPEAL are as follows:

- 1) Sections 64, 65, 67, and 71 of the <u>Customs Act</u> R.S.C. 1986, Chap. 1 (2nd Supp.);
- 2) The Deputy Minister of National Revenue for Customs and Excise erred in determining that the seized materials were obscene;
- The criteria used to determine whether material is obscene discriminates against those people with same sex preference, contrary to section 15 of the <u>Canadian Charter of Rights and Freedoms</u>; and
- 4) The detention of the subject materials is an unreasonable violation of the appellant's freedom of expression, contrary to section 2 of the <u>Canadian Charter of Rights and Freedoms</u>.

You may ascertain the approximate hearing date of this appeal from the local registrar at 361 University Avenue, Room 110, telephone (416) 965-7351.

Date: October 18, 1990

ILER, CAMPBELL & ASSOCIATES 150 Simcoe Street Toronto, Ontario M5H 3G4

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Debra McAllister Solicitor for the Respondent

and DEPUTY MINISTER of NATIONAL REVENUE for CUSTOMS and EXCISE

Court file no.

Respondent

# DISTRICT COURT OF ONTARIO

Proceeding commenced at Toronto

## NOTICE OF APPEAL

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